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In the Supreme Court of the United States

OCTOBER TERM, 1931.

No. 179

HERBERT S. DANIEL, TRUSTEE OF PETERS TRUST COMPANY, BANKRUPT,

Petitioner,

vs.

GUARANTY TRUST COMPANY OF NEW YORK,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

HALLECK F. ROSE,
ARTHUR R. WELLS,
PAUL L. MARTIN AND
WINTHROP B. LANE,
Counsel for Petitioner.

COCKLE PRINTING CO., LAW BRIEFS, OMAHA

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Supreme Court of the United States:

The above named petitioner, Herbert S. Daniel, trustee of Peters Trust Company, bankrupt, prays for a writ of certiorari to review the order and decree of the United States Circuit Court of Appeals for the Eighth Circuit, entered May 4, 1931, in a cause heard and determined in

said court on appeal from the District Court of the United States for the District of Nebraska, entitled "Guaranty Trust Company of New York, appellant, vs. Herbert S. Daniel, Trustee of Peters Trust Company, bankrupt, appellee," a certified copy of the record and proceedings whereof are filed and presented herewith.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

December 10, 1929, an adjudication of bankruptcy was entered against Peters Trust Company, incorporated under a statute of Nebraska governing trust companies, that forbade the conduct by it of the business of banking. *Petitioner was, on the date of the adjudication appointed receiver. On March 17, 1930, he was elected trustee. He qualified for each of said offices, in turn, and is now the qualified and acting trustee of the estate of the bankrupt.

In the ordinary conduct of its business, and before any proceedings were had for its liquidation, the bankrupt purchased from *The Guaranty Company* of New York, negotiable bonds of Canadian National Railways of the par value of $5,000, notes of New York, Chicago & St. Louis Railway of the par value of $5000, bonds of the Texas Corporation of the par value of $8000, and bonds of Canadian National Railways of the par value of $5000. (Printed Record, p. 5 contains the list.)

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*NOTE: The opinion of the lower court (printed record p. 45) erroneously states that the bankrupt is a banking corporation. It was previously adjudged by the Circuit Court of Appeals for the Eighth Circuit that the bankrupt was forbidden by the law of its creation to do a banking business, and was not a banking corporation within the meaning of the clause of the bankruptcy act exempting banks from its operation. (*Gamble v. Daniel*, 39 Fed. 2d 447.) A petition for a writ of certiorari in that case was denied by the Supreme Court. (*Gamble v. Daniel*, Adv. Op. 1930 Term p. 15).

The bonds were delivered without payment, and soon thereafter in liquidation proceedings in a state court a receiver was appointed for and took over possession of the bankrupt's assets. After the adjudication of bankruptcy the bonds in question came into the custody of the petitioner pursuant to a turnover order issued by the bankruptcy court against John Gamble, the receiver of the state court. (*Gamble v. Daniel*, 39 Fed. 2d. 447.)

The bankrupt, Peters Trust Company, up to and at the time of its suspension kept a deposit account with the respondent, Guaranty Trust Company of New York. That account on suspension of business, November 25, 1929, showed a credit in favor of the bankrupt of $31,046.53. At the same time the bankrupt was indebted to the respondent on a demand loan account in the sum of $154,200.00. So the respondent, as it had a right to do, applied the bankrupt's credit balance of $31,046.53 as a credit on its demand loan account and made a counterbalancing debit of the same sum in the deposit account, and closed the latter account in balance. The right to make this setoff is not questioned. Statements of account rendered by respondent are the basis of the figures here given. (Printed Record, Exhibit A, pp. 16-18; Exhibit B, p. 41.)

The respondent held collateral security, deposited by the bankrupt, of a value largely in excess of the sum due on the bankrupt's demand loan account. Money collected on the excess collateral was the subject of the turnover order. An officer of the bankrupt, on November 26, 1929, at the office of the respondent, informed Mr. Curtis, a vice-president of respondent, that Peters Trust Company had been taken over by the State for liquidation in in-

solvency proceedings, and found that respondent had already been so advised. (Printed Record, pp. 14-15.) On the next following day, November 27, 1929, after Peters Trust Company was known to be in process of liquidation and to have committed an act of bankruptcy, and after it had impounded and applied Peters Trust Company's bank account as above stated, the respondent purchased the account of *The Guaranty Company* against the bankrupt. Obviously, an account so purchased after insolvency, pending a judicial proceeding for liquidation of the bankrupt, cannot be made the basis of a setoff against respondent's liability for the subsequent collection of excess collateral that had not been pledged to secure payment of the assigned account. (Bankruptcy Act. Sec. 68b.)

Respondent, as such assignee of the Guaranty Company, appeared voluntarily before the referee in bankruptcy and, on April 2, 1930, filed an application and petition for the reclamation of the aforementioned negotiable securities on the grounds that their sale was subject to rescission, because the purchase money was not paid in accordance with the terms of sale, and that their delivery to the bankrupt was obtained by fraud. (Printed Record, pp. 1-4.)

Your petitioner, the trustee in bankruptcy, on April 3, 1930, filed with the referee in bankruptcy an answer to respondent's petition for reclamation, in which he denied that the sale of the bonds and notes was conditioned on payment by the bankrupt contemporaneously with their delivery, and alleged their ownership by the bankrupt. The answer alleged that customers of the bankrupt had previously ordered and paid the bankrupt for certain of said securities, and claimed ownership, and asked that

they be made parties and directed to assert their claims, if they had any claims thereto.

The answer further alleged that respondent had in its possession $31,224.60 "which was accumulated by the receiver and trustee of said bankrupt estate since the date it was adjudicated bankrupt." It was alleged that respondent, upon demand of the trustee therefor, had failed to deliver the same to the trustee, and there was a prayer for an order on respondent to deliver to the trustee said funds collected by it on behalf of the bankrupt estate. (Printed Record, pp. 4-8.)

The record shows that on April 5, 1930, the referee made an order requiring the persons named in the trustee's answer, as claimants of certain of said securities, to appear by April 16, 1930, and set forth in writing any interests claimed by them, respectively, in said securities; that the order was served, and five of said persons presented their claims; the making of an order setting the matter for hearing on April 23, 1930, and an adjournment of the hearing to April 25, 1930, "at the request of H. M. Baldrige, attorney for the Guaranty Trust Company;" and the appearance of all parties, by attorney, at said last named date, when the matter was heard and determined by the referee. (Printed Record, pp. 18-19.)

Before the hearing on the merits was taken up, respondent's counsel moved orally to strike out the paragraphs of petitioner's answer alleging that customers of the bankrupt were claiming certain of the bonds and notes in question, and, that the respondent had collected and received money on behalf of the bankrupt estate since the adjudication of bankruptcy which it should deliver over to respondent as trustee. The referee overruled this mo-

tion, and counsel for respondent then dismissed its petition for reclamation, and made the following statement: "The Guaranty Trust Company, by its attorneys, aren't interested in this proceeding. We do not believe we are in court, and we are not interested to stay." (Printed Record, pp. 8-10.)

Counsel for respondent thereupon withdrew, and the referee proceeded with the hearing on the petitions of intervenors, and the answer of the petitioner, as trustee. (Printed Record, pp. 10-21.) A turnover order against respondent covering a balance of $23,724.60 was entered by the referee, based upon the following findings:

"And the court further finds that the Guaranty Trust Company has in its hands the sum of $23,724.60 in cash belonging to Herbert S. Daniel, trustee of the above named bankrupt; that said sum was accumulated by Herbert S. Daniel, as receiver, subsequent to February 12th, 1930, said moneys having been collected by said Guaranty Trust Company for and on behalf of said bankrupt estate from the Prudential Insurance Company of America, on mortgages made by the bankrupt and sold to the Prudential Insurance Company of America, and that said Guaranty Trust Company has not made herein any claim to the said fund of $23,724.60, and is merely holding the said sum of $23,724.60 as custodian and agent of Herbert S. Daniel, as trustee of the above named bankrupt, and that said sum should be delivered forthwith to said trustee." (Printed Record, p. 20.)

On respondent's petition for review the District Judge affirmed the order of the referee. (Printed Record, p. 26.) On appeal by respondent the decree affirming the referee's turnover order was, on May 4, 1931, reversed by the said United States Circuit Court of Appeals for the Eighth Circuit. (Printed Record, pp. 45-50.)

On the merits, the case presents a bald refusal by respondent to turn over to the trustee money collected by it for the estate of the bankrupt, after the date of the adjudication. There is no basis in the record for any contention that respondent made any adverse claim of ownership or lien on the fund in question, that would entitle it to an adjudication in a plenary suit. This statement has the plain and direct approval of the opinion of the Circuit Court of Appeals, delivered by MUNGER, D. J., as the following quotations show:

"Appellant does not question the authority of a bankruptcy court, through ancillary proceedings in the territorial jurisdiction of appellant's residence to order the delivery of the bankrupt's assets, but *appellant asserts that it was not subject to the order of the referee in this case, although it had filed a petition in reclamation before him.*" (Printed Record, p. 47.)

"No complaint was made of the facts found by the referee. Under these findings *there is no basis for any claim that the appellant was an adverse claimant,* both because no such claim was asserted, and because the referee found that the money in question was the bankrupt's, *and had been received after the bankruptcy proceedings had begun.*" (Printed Record, p. 47.)

The subject matter of the respondent's petition for reclamation, and of petitioner's answer presenting a cause for affirmative relief by a turnover order against respondent, was clearly within the summary jurisdiction of the referee. The sole question raised by the record is: Did the respondent by appearing voluntarily and invoking the summary powers of the referee for affirmative relief in the course of the administration of the bankrupt estate, *submit its person to the jurisdiction of the referee* for the purpose of determining a claim of the trustee for

relief set up in an answer to respondent's petition, and filed while respondent's petition was pending.

Petitioner maintains that jurisdiction of the subject matter and of the person of respondent had definitely attached, and respondent could not defeat that jurisdiction by a dismissal of its own petition after first obtaining an adverse ruling on a motion to strike the trustee's claim for affirmative relief from his answer. The dismissal at that stage left the case pending on the claim for affirmative relief tendered by the answer of the trustee, to which respondent had appeared by its motion to strike.

When jurisdiction of a suitor attaches by virtue of a voluntary appearance, consideration of the place of his domicile becomes immaterial. The circumstance that respondent is domiciled in the Southern District of New York gives it no license to play fast and loose with a referee in bankruptcy of the District of Nebraska. If respondent had prosecuted its petition for reclamation to a successful conclusion, it must obviously have taken its relief upon the equitable condition that it turn over to the trustee the money of the estate then in its hands. In the circumstances shown jurisdiction to make the turnover order against respondent was as full and complete as though respondent had been domiciled at Omaha, in the District of Nebraska.

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REASONS RELIED ON FOR ALLOWANCE OF WRIT.

I.

The said United States Circuit Court of Appeals has, in said case, decided an important question of federal law which has not been, but should be, settled by this court.

The point so decided is: that one who, without claim of ownership or interest, withholds from a trustee in bankruptcy funds of the bankrupt estate, received on behalf of the trustee after the adjudication of bankruptcy, may voluntarily appear before the referee in bankruptcy and present a petition for reclamation of specific personal property, without being subject to an order of the referee (based on the trustee's answer in the same proceeding) to deliver over to the trustee the funds of the estate so wrongfully withheld.

Apparently that specific question of federal law has not been decided by this court. The question is obviously one of general public interest and concern. The question involves the interpretation of the bankruptcy act and has a sensitive bearing upon the orderly, economic and speedy administration of bankrupt estates, and, petitioner submits, should be authoritatively settled by this court.

II.

The said decision of the United States Circuit Court of Appeals for the Eighth Circuit is in conflict with the decision of the United States Circuit Court of Appeals for the Seventh Circuit rendered in Operators Piano Co. v. First Wisconsin Trust Co., 283 Fed. 904.

In the case in the Eighth Circuit, the decision here complained of is to the effect that one may become a petitioner for summary relief in a court of bankruptcy without subjecting himself to an order of the referee

based on the referee's determination of a cross-claim set up by the trustee in the answer.

In *Operators Piano Co. v. First Wisconsin Trust Co.*, 7 C. C. A. 283 Fed. 904, it was held that one who is himself a petitioner for relief in a summary proceeding in bankruptcy does subject himself to orders disposing of affirmative claims set up by the trustee in answer to his own petition.

The opinion of the Circuit Court of Appeals for the Eighth Circuit holds that there is no basis for a claim that respondent was an adverse claimant of the money in question and, necessarily, that the subject matter is within the summary jurisdiction of the referee, and then states respondent's contention as follows:

"There remains the question of whether the referee and the court below had the power to order this money to be turned over to the referee. Appellant does not question the authority of a bankruptcy court, *through ancillary proceedings in the territorial jurisdiction of appellant's residence,* to order the delivery of the bankrupt's assets, but appellant asserts that it was not subject to the order of the referee in this case, *although it had filed a petition in reclamation before him.*" (Printed Record, p. 47.)

The concluding words of the opinion are:

"We have been cited to no authority for the proposition that a creditor or other petitioner asking specific relief against a bankrupt's estate, as provided by the Bankruptcy Act, thereby becomes subject to summary orders by the referee in matters entirely disconnected from the subject matter of such claim or petition, and no such authority is believed to exist. Under the circumstances we think that the appellant's objections to the jurisdiction should have been sustained, and the order of the court

affirming the order of the referee will be reversed." (Printed Record, p. 49.)

In *Operators Piano Co. v. First Wisconsin Trust Co.*, 7 C. C. A., 283 Fed. 904, the court in the opinion by EVANS, C. J., said:

"Likewise, where the adverse claimant is himself a petitioner for relief in a summary proceeding. he opens the door to such defenses as the trustee in bankruptcy possesses, and all such issues and all such defenses (including affirmative claims) may be properly litigated in that summary proceeding. For a litigant cannot himself invoke the jurisdiction of the court and the particular form of proceeding (summary as well as plenary) and then object to the disposition of the issues which the respondent (the trustee) may raise, either as a defense to his petition, or as the basis of a counterclaim. The consent thus given cannot be subsequently withdrawn." The bracketed words are as they appear in the report.

In the instant case, the referee in bankruptcy at the original hearing, and the District Court upon review, maintained jurisdiction under the doctrine of the last cited case. The decision of the Circuit Court of Appeals for the Eighth Circuit, here complained of, denying jurisdiction, is in conflict with the decision in the case last cited.

The decision of the United States Circuit Court of Appeals for the Eighth Circuit is also in conflict with the decision of the United States Circuit Court of Appeals for the Second Circuit in *In re Carl Dernburg & Son*, 5 Fed. (2d) 37, in which the court, answering an objection that the referee in bankruptcy was without power, in a summary proceeding, to determine a question of preference, said:

"Every person submitting himself to the bankruptcy court in the progress of the case for the purpose of hav-

ing his rights in the estate determined, makes himself a party to the suit and bound in the legitimate course of the proceeding." (5 Fed. 2d. 39.)

It is obvious that confusion and uncertainty in the administration of estates in bankruptcy will result from the apparent conflict in the decisions cited. Petitioner. therefore, submits that the question of federal law involved should be decided by this court so that the bankruptcy act may have a uniform operation in all of the federal courts.

III.

The said United States Circuit Court of Appeals, in said case, has rendered a decision involving the jurisdiction of referees in bankruptcy and the right of a trustee, by answer, to tender issues for affirmative relief, that so far departs from the accepted and usual course of judicial proceedings, as to call for an exercise of this court's power of supervision.

References under this head are made to the established usage of taking issue by answer on petitions for summary relief before referees in bankruptcy; to the application in such cases of the rules and usages of equity; and to the propriety and necessity of according the same privilege of presenting affirmative claims by answer, in bankruptcy proceedings, that is expressly sanctioned by equity rule 30.

The orderly, economic and speedy administration of bankrupt estates requires recognition and application of these just and equitable usages. The interest of creditors is furthered by the speedy termination of controversies and the avoidance of a multiplicity of suits. A cardinal virtue of the reformed code of equity procedure in the federal courts, is the sanction of the presentation

of cross-demands by answer. That is a provision for the speedy settlement, in a single equity proceeding, of all issues capable of trial between the parties, even though they are not related. There appears no occasion, in bankruptcy proceedings, for adherence to archaic forms that were discarded by this court upon the adoption of the present equity rules. This court evidently recognized that the abandoned procedure, prescribed by the old rules, fostered and prolonged litigation, by restricting cross-demands of a defendant to matters that were germane to the subject of the bill, and requiring cross-bills for their presentation. We have not discovered any expression of this court, by decision, rule or order, favoring the continuance of the discarded, archaic forms of procedure, in proceedings before the courts of bankruptcy. The settlement by this court of the question of practice involved, at some time, in some proceeding in bankruptcy, is not only desirable, but seems to be a matter of urgent necessity.

The code of federal equity procedure prescribed by the present equity rules, is matchless in comprehensive brevity, removal of obstructive complications, and in its beneficent tendency to speed final determination of all equitable causes upon the merits. It has greatly advanced and popularized the federal equity forum. Its benign offices are as important to the speedy and orderly administration of estates in bankruptcy as to causes within the general jurisdiction of equity.

The decision of the Circuit Court of Appeals flatly denies the application of rule 30 to equitable administrations in bankruptcy, and stubbornly adheres to the ancient, discarded doctrine that no cross-claim is presentable

by answer that is not germane to the cause of action set forth in the original bill. Petitioner, therefore, submits that the decision is reactionary and obstructive of justice, and so far departs from the accepted and usual course of modern judicial procedure, as to call for an exercise of this court's power of supervision.

IV.

The United States Circuit Court of Appeals, in said case, has decided a federal question in a way probably in conflict with an applicable decision of this court in Robertson v. Howard, 229 U. S. 254-264.

Apparently, the opinion of the lower court holds that this case is ruled by *Babbitt v. Dutcher,* 216 U. S. 102, and *Elkus, Petitioner,* 216 U. S. 115, both holding to the effect that under the original bankruptcy act, as passed in 1898, the respective district courts have ancillary jurisdiction in aid of bankruptcy proceedings pending in another district. The theory of the decision here in question seems to be that since such ancillary jurisdiction exists, the court of primary jurisdiction is wholly without power to make a turnover order against any one who is domiciled without its territorial limits. It is submitted that such theory is unsound and in conflict with *Robertson v. Howard,* 229 U. S. 254.

Among other expression contained in the opinion in the instant case, evidencing the adoption and application of that untenable theory, are the following:

"The courts of bankruptcy may act in the exercise of their jurisdiction *in their territorial limits,* but there may be ancillary bankruptcy proceedings *in other districts,* in aid of the bankruptcy court exercising primary jurisdiction. Bank. Act. §2(20); *Babbitt v. Dutcher,* 216 U. S. 102; *Elkus, Petitioner,* 216 U. S. 115; *Lazarus v. Pren-*

tice, 234 U. S. 263. An order by the referee directing appellant, *as a resident of New York,* to surrender to the trustee property which it held there, would be beyond the ordinary powers of the referee. *Staunton v. Wooden,* 179 Fed. 61." (Printed Record, p. 47.)

"Appellant sought to recover certain bonds to which it claimed title. The trustee sought an order that appellant should pay over money of the bankrupt estate received by appellant, after bankruptcy. The proceedings would not have been more unrelated to each other, if the trustee had sought an order on appellant for the delivery of books and papers, such as was asked in *Babbitt v. Dutcher,* 216 U. S. 102, or an order for the examination of witnesses, such as was asked in *Elkus, Petitioner,* 216 U. S. 115." (Printed Record, p. 49.)

The ancillary jurisdiction, under the act as it was passed in 1898, is well settled by the cases cited; and, as if some doubt had still existed, subdivision 20 of Section 2 was added by amendment in 1910, investing courts of bankruptcy with express power to "exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy."

The bearing of this existing *ancillary* jurisdiction upon the issue involving the powers of the court of *primary* jurisdiction, was wholly misconceived and misapplied by the Circuit Court of Appeals. The existence of the ancillary jurisdiction presupposes and affirms jurisdiction of the primary court over the subject of the proceeding. Aid of the existing primary jurisdiction of another court, is the sole and exclusive object for creation of the ancillary jurisdiction. Ancillary jurisdiction can only be exercised by one district court when primary juris-

diction exists in another bankruptcy court. Where one against whom relief is sought is not within the reach of the process of the primary court, resort to the ancillary jurisdiction of the court of his domicile becomes necessary. But such resort is not required where the non-resident party *voluntarily appears* in the court of primary jurisdiction, and presents a petition for summary relief in his own behalf.

The decision by the lower court of the question now under consideration is at war with the holding of this court in *Robertson v. Howard,* 229 U. S. 254, 264, in which it was said in the opinion by Mr. Chief Justice White:

"Even if the enlarged powers of a court of bankruptcy over the estate under its control be put out of view, and the subject be looked at as a mere question of equitable jurisdiction, it may not be doubted that a court of equity in one state, in a proper case, could compel *a defendant before it* to convey property situated in another state. *Fall v. Eastin,* 215 U. S. 1, 8, et seq. 54 L. Ed. 65, 69; 23 L. R. A. (N. S.) 924, 30 Sup. Ct. Rep. 3, 17 Ann. Cas. 853, and cases cited. There being thus ample power in the court, it follows, of course, that resort to ancillary proceedings was unnecessary. The decision in *Babbitt v. Dutcher,* 216 U. S. 103, 54 L. Ed. 402, 30 Sup. Ct. Rep. 372, 17 Ann. Cas. 969, to the effect that district courts, other than the court in which the original proceedings in bankruptcy are instituted, possess power in proper cases to exert ancillary jurisdiction in aid of the court in which the bankruptcy proceedings are pending, lends no support to the contention that the court which had full power could not exert its ample authority without invoking the ancillary power of another and different court." (229 U. S. 261-262.)

The opinion of Mr. Chief Justice White, from which the foregoing excerpt is taken, is an authoritative precedent, condemning the decision of the Circuit Court of

Appeals, and upholding that of the referee and the District Court. It condemns the theory of the decision of the Circuit Court of Appeals that because it was possible for the trustee to resort to the ancillary jurisdiction of the District Court for the Southern District of New York, the District Court for the District of Nebraska could not exert its ample authority against the Guaranty Trust Company, *that was already before it with a petition of reclamation,* to make a turnover order involving a fund in its hands, collected for the bankrupt estate, after the adjudication of bankruptcy. The opinion of the Chief Justice here cited and relied upon, renders all citations of the lower court, maintaining ancillary jurisdiction, immaterial and inapplicable, and leaves the judgment of the lower court unsupported and foundationless.

A short argument maintaining the reasons here assigned for granting the writ is submitted in the brief accompanying this petition.

For the reasons stated, it is submitted that a writ of certiorari should be allowed and that the questions involved should be decided by this court.

Wherefore, your petitioner prays that a writ of certiorari may issue out of and under the seal of this honorable court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said court to certify the above stated cause to this court for review and determination, as provided by law, and that your petitioner may have such other and further relief in the premises as to this court may seem appropriate.

HERBERT S. DANIEL,
Trustee of Peters Trust Company, Bankrupt,
Petitioner.

HALLECK F. ROSE,
ARTHUR R. WELLS,
PAUL L. MARTIN AND
WINTHROP B. LANE,
Counsel for Petitioner.

STATE OF NEBRASKA
DOUGLAS COUNTY } ss.

I, Halleck F. Rose, being duly sworn depose and say on oath that I am one of the counsel for the petitioner named in the foregoing petition, and that I have read the petition and know the contents thereof, and the facts therein stated are true to the best of my knowledge, information and belief.

HALLECK F. ROSE.

Subscribed in my presence and sworn to before me, this 10th day of June, 1931.

Seal

WINFIELD R. ROSS,
NOTARY PUBLIC.

COUNSEL'S CERTIFICATE OF MERIT.

I hereby certify that I have examined and read the foregoing petition for a writ of certiorari and that in my opinion such petition is well founded and should be granted by this Honorable Court, and that said petition is presented in good faith and is not filed for delay.

HALLECK F. ROSE.
Of Counsel for Petitioner.

June 10, 1931.

In the Supreme Court of the United States

OCTOBER TERM, 1931

HERBERT S. DANIEL, TRUSTEE OF PETERS TRUST COMPANY,

Petitioner,

v.

GUARANTY TRUST COMPANY OF NEW YORK,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

I.

The incidental questions involving the jurisdiction of courts of bankruptcy (including referees exercising the powers of such courts under §38, subd. 4) have been settled in favor of the bankruptcy court's jurisdiction of the subject matter of respondent's petition for reclamation, and of petitioner's cross claim by answer for a turnover order against respondent.

This case is not a controversy between a trustee and an adverse claimant concerning property claimed by the trustee, which, unless by consent of the defendant, must be determined in a plenary suit brought by the trustee in a court in which the bankrupt might have brought it if bankruptcy had not intervened. The record, as stated and cited in the foregoing petition for a writ of certiorari, the findings of the referee approved by the District Judge, and the opinion of the Circuit Court

of Appeals, all show that the money ordered turned over by respondent to the trustee was, confessedly, the money of the estate, collected by respondent after the adjudication of bankruptcy, and to which respondent made no claim of ownership. The jurisdiction is not, therefore, governed by §23 of the Bankruptcy Act, relating to plenary suits by trustees against adverse claimants of property that is claimed by a trustee.

Section 2(7) of the Bankruptcy Act invests courts of bankruptcy with jurisdiction at law and in equity to "cause the estates of bankrupts to be collected, reduced to money and distributed, *and determine controversies in relation thereto, except as herein provided.*"

Section 33 creates the office of Referee; and Section 38(4) invests the referee with jurisdiction to:

"perform such part of the duties, except as to questions arising out of the applications of the bankrupt for composition or discharge, *as are by this act conferred on courts of bankruptcy of their respective districts,* except as herein otherwise provided."

Section 36 prescribes the same oath for referees as that prescribed for judges of United States courts.

This court has determined by its well considered judgments, that issues of the class now under consideration do not come under any of the exceptions of the bankruptcy act of questions reserved from the general powers conferred upon referees, and that the referee has power to act in the first instance on such matters and make a summary turnover order. (*Mueller v. Nugent,* 184 U. S. 1-18; *Harrison v. Chamberlain,* 271 U. S. 191-195.)

Section 70(a) of the Bankruptcy Act vests in the trustee the property and rights, real and personal be-

longing to the bankrupt, as of the date he was adjudged a bankrupt.

The money affected by the referee's order in the present case was, by operation of the statute, placed in the constructive possession of the bankruptcy court from the date of its receipt by respondent. The excess collateral mortgages from which the money was derived were in constructive possession of the court from the date of the adjudication in bankruptcy. The conceded facts preclude the possibility of acquisition by respondent of any adverse right in the money collected on the excess collateral. The balance in its hands, and its receipt subsequent to the adjudication of bankruptcy, were determined from the respondent's own statement of account rendered to the trustee and the money ordered turned over was that which remained in its hands, after respondent had applied $156,700.00, plus interest, in full payment of the demand loan account of the bankrupt. There can be no complaint against the merits of an order based upon an acceptance of respondent's own accounting, which confesses the retention of money of the estate that came to its hands after the adjudication.

The matters mentioned under this head are not dwelt upon in this brief, for the reason that they have been previously determined by this court, in favor of the general jurisdiction of the courts of bankruptcy and the referee's jurisdiction of the subject matter of the order complained of is not open to reasonable question. These points also appear to be conceded by the Circuit Court of Appeals, in its opinion. We, therefore, confine our presentation to the questions involved in the holding that the bankruptcy court was without jurisdiction of the person of the respondent.

II.

The Bankruptcy Act, in terms, confers equity jurisdiction upon courts of bankruptcy.

The presentation by the trustee of the cross-demand in his answer to the respondent's petition for reclamation, and the power of the court to determine the issue so presented, are sanctioned by equity rule 30 and General Order in Bankruptcy XXXVII.

Jurisdiction of the bankruptcy court over the person of respondent was obtained by its voluntary appearance and the presentation of its petition for reclamation.

Respondent's withdrawal after the issues had been made up and the hearing entered upon did not defeat the jurisdiction, previously attached, to determine the issue raised by the answer of the trustee.

Section 2 of the Bankruptcy Act provides that courts of bankruptcy:

"are hereby invested within their respective territorial limits as now established or as they may be hereafter changed, with such jurisdiction at law *and in equity* as will enable them to exercise *original jurisdiction in bankruptcy proceedings*, in vacation in chambers, and during their respective terms as they are now or may be hereafter held, to * * * * (7) cause the estates of bankrupts to be collected, reduced to money and distributed, *and determine controversies in relation thereto*, except as herein otherwise provided."

Subject to certain specific exceptions that are not involved in the instant case, original equity jurisdiction "to determine controversies in relation" to collection, reduction to money, and distribution of the estates of bankrupts, is thus expressly conferred upon courts of bankruptcy.

As stated in *Fidelity Trust Company v. Gaskell*, 195 Fed. 865, at 871, C. C. A. 8, "A proceeding in bankruptcy

is a proceeding in equity and a district court sitting in bankruptcy, whether in exercising its primary or ancillary jurisdiction, is a court of equity."

Section 38 (4), quoted in division I of this brief (ante, p. 20) confers upon referees, subject to exceptions not here involved, jurisdiction to perform such part of the duties as are conferred on courts of bankruptcy of their respective districts.

Section 30 refers to the Supreme Court of the United States the duty of prescribing rules, forms and orders as to procedure for carrying the act into force and effect.

This court by No. XXXVII of the General Orders in Bankruptcy, adopted in conformity to said §30, prescribed the following rule of practice:

"In the proceedings in equity instituted for the purpose of carrying into effect the provisions of the act, *or for enforcing the rights and remedies given by it*, the rules of equity practice established by the Supreme Court of the United States shall be followed, as nearly as may be * * *."

Obviously, except as the privilege of modification is granted to facilitate speedy hearings, the rules of equity practice are applicable, without limitation or reservation, to all equitable proceedings in courts of bankruptcy. Some of the inferior federal courts have disregarded the rules of equity practice in equitable proceedings in bankruptcy, or have asserted that their application is limited and not authoritative. But the order quoted makes it mandatory for courts of bankruptcy to follow the equity rules in all proceedings in equity, as nearly as may be.

Upon the foundation of the quoted statutory delegations of jurisdiction, and the general order XXXVII

establishing rules of procedure, petitioner invokes the following provision of equity rule 30:

"The answer *must* state in short and simple form any counterclaim arising out of the transaction which is the subject matter of the suit, and *may* without cross-bill set out any set-off or counter-claim against the plaintiff which might be the subject of an independent suit in equity against him, and such set-off or counter-claim, so set up, shall have the same effect as a cross-bill, so as to enable the court to pronounce a final judgment in the same suit on both the original and cross-claims."

In *American Mills Co. v. American Surety Co.*, 260 U. S. 360, 365, this court in an opinion by MR. CHIEF JUSTICE TAFT, delivered the following exposition of the quoted provision of equity rule 30:

"The counter-claim and the set-off and counter-claim in the two clauses are in *pari materia* except that the first grows out of the subject matter of the bill and the other does not. That which grows out of the subject matter of the bill must be set up in the interest of an end of litigation. That which does not may be set up, if the defendant wishes, in one proceeding in equity, quickly to settle all equitable issues capable of trial between them in such a proceeding, even though they are not related."

The proceeding for the adjudication of bankruptcy is an equitable proceeding. It is an administration suit, and the adjudication vests the trustee with title to the property of the bankrupt, and places it in the exclusive custody and control of the court of bankruptcy, and throws upon that court the duty of collecting, reducing to money and distributing the estate of the bankrupt, and of determining controversies relating thereto. These are equitable powers for performance of which the Congress very properly invested courts of bankruptcy with jurisdiction in equity.

Suits for administration, other than in bankruptcy, have furnished frequent occasions for resort to the general jurisdiction of equity. It is the settled rule of this court that when an equity court in such a suit takes control of property for the purpose of administration or liquidation, it thereby withdraws such property from the jurisdiction of all other courts, and draws to itself incidental jurisdiction to hear and determine all questions respecting the title, possession or control of such property. This court has applied that rule to protect and enforce the paramount and exclusive jurisdiction of courts of bankruptcy over the property of bankrupt estates, actually or constructively in their possession or control. (*Murphy v. John Hofman Co.*, 211 U. S. 562; *Isaacs v. Hobbs Tie & Timber Co.*, 282 U. S. 734; *White v. Schloerb*, 178 U. S. 542; *Dayton v. Stanard*, 241 U. S. 588.)

A summary and accurate statement of the rule that in such cases the primary jurisdiction is exclusive, as applied by this court in bankruptcy proceedings, is embraced in the opinion of Mr. Justice Roberts in *Isaacs v. Hobbs Tie & Timber Co.*, 282 U. S. 734, as follows:

"Upon adjudication title to the bankrupt's property vests in the trustee with actual or constructive possession and is placed in the custody of the bankruptcy court. *Mueller v. Nugent*, 184 U. S. 1, 14, 46 L. Ed. 405, 411, 22 S. Ct. 269. The title and right of possession of all property owned and possessed by the bankrupt vests in the trustee as of the date of the filing of the petition in bankruptcy, no matter whether situated within or without the district in which the court sits. *Robertson v. Howard*, 229 U. S. 254, 259, 260, 57 L. Ed. 1174, 1177, 33 S. Ct. 854; *T. E. Wells & Co. v. Sharp*, 125 C. C. A. 46, 208 Fed. 383; *Galbraith v. Robertson-Hilliard Grocery Co.*, 133 C. C. A. 46, 216 Fed. 842, 32 Am. Bankr. Rep. 752. It follows that the bankruptcy court has exclusive jurisdiction to deal

with the property of the bankrupt estate. It may order a sale of real estate lying outside the district. *Robertson v. Howard*, 229 U. S. 254, 259, 260, 57 L. Ed. 1174, 1177, 33 Sup. Ct. 854, supra; *Re Wilka* (D. C.) 131 Fed. 1004. When this jurisdiction has attached the court's possession cannot be affected by actions brought in other courts. *White v. Schloerb*, 178 U. S. 542, 44 L. Ed. 1183, 20 S. Ct. 1007; *Murphy v. John Hofman Co.*, 211 U. S. 562; 53 L. Ed. 237, 29 S. Ct. 154; *Dayton v. Stanard*, 241 U. S. 588, 60 L. Ed. 1190, 36 S. Ct. 695. This is but an application of the well recognized rule that when a court of competent jurisdiction takes possession of property through its officers, this withdraws the property from the jurisdiction of all other courts which, though of concurrent jurisdiction, may not disturb that possession; and that the court originally acquiring jurisdiction is competent to hear and determine all questions respecting title, possession and control of the property. *Murphy v. John Hofman Co.*, 211 U. S. 562, 53 L. Ed. 327, 29 S. Ct. 154, supra; *Wabash R. Co. v. Adelbert College*, 208 U. S. 38, 52 L. Ed. 379 28 S. C. 182; *Harkin v. Brundage*, 276 U. S. 36, 72 L. Ed. 457, 48 S. Ct. 268."

It is thus settled by the statutes, rules, orders and decisions, cited above, that jurisdiction in equity is conferred on courts of bankruptcy. The administration of a bankrupt estate is an equitable proceeding. The adjudication of bankruptcy places the property of the bankrupt actually or constructively within the control of the bankruptcy court. The jurisdiction of equity, having once attached, remains for all purposes to the end of the proceeding. The exclusive control of the property draws to the court the power to determine all controversies concerning its title, possession and control. In one respect, at least, the equity power of courts of bankruptcy is broader than the general equity jurisdiction of the federal courts. A court of bankruptcy may, by injunction, stay

proceedings in state courts, and that power is denied to federal courts of general equity jurisdiction.

The cases cited hold that property in possession of a trustee in bankruptcy can not be reclaimed by replevin or any form of action at law or in equity, in any court other than the bankruptcy court of primary jurisdiction. All such controversies are drawn to the bankruptcy court, as an incident of its equitable proceeding for administration and distribution of the property of the bankrupt.

Respondent's only resort for reclamation of property in the actual or constructive possession of the trustee, as an officer of the court, was the presentation of a petition in the equitable proceeding in the bankruptcy court. If a petition to reclaim property in the custody of an equity receiver had been presented to a court exercising general equity powers, the right of the receiver to present a cross-claim by answer, that also involved property rights of the estate in receivership, could not be doubted, in view of equity rule 30. In such case the claim of the petitioner, and the cross-claim of the receiver or trustee, are both, in fact, claims for reclamation of property in the actual or constructive possession and control of the court. Jurisdiction to determine all controversies in relation thereto resides in the bankruptcy court of primary jurisdiction. Petitioner, therefore, maintains that by virtue of equity rule 30 and general order in bankruptcy XXXVII the trustee was authorized to present his cross-demand for delivery of money constructively in *custodia legis*, whether related or unrelated to the subject matter of respondent's petition for reclamation, and whether the proceeding was summary or plenary.

Where the court of bankruptcy has power to determine a controversy in a summary proceeding, the trustee ought not to be, and cannot rightfully be denied the privilege of presenting a claim, by answer, that he could exercise under equity rule 30, if the same identical issue tendered by respondent were presented in a plenary suit in equity for rescission of the sale of the bonds, and for an order for their delivery by the trustee to respondent.

III.

By General Order XXXVII the rules of equity practice are made applicable, without limitation, to be followed "as nearly as may be" in all "proceedings in equity instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it."

We discover no restrictive words limiting the applications of this order in proceedings in bankruptcy. On the contrary its terms are general and all embracing. The order makes applicable the rules of equity, in all proceedings in equity instituted either for the purpose of carrying into effect the provisions of the bankruptcy act, or for enforcing any right or remedy given by the act. Surely the terms thus employed by this court are broad enough to include every branch of the equity jurisdiction conferred upon and exercised by the courts of bankruptcy, whether primary or ancillary, plenary or summary. The words are so general and comprehensive that it is not possible to spell out of them any restrictions or limitations that make them inapplicable to any sort of a proceeding in equity of which courts of bankruptcy are invested with jurisdiction.

The denial by the Court of Appeals in the present case of the right of the trustee to present his cross-demand

by answer, gives occasion to thus recall the general and comprehensive terms of Order XXXVII. The desirability and urgency of a settlement by this court of the meaning, application and scope of that order are emphasized by repeated refusals of inferior federal courts to apply the rules of equity practice in equitable proceedings in courts of bankruptcy, and by apparent conflicts of decisions upon the question of their applicability. We here cite a few illustrative cases.

In *re Cunney* (D. C. Mass.) 225 Fed. 428, the court said:

"General Order No. XXXVII, applies only to equity proceedings, *properly so called*, and not to summary proceedings in bankruptcy like this" (objections to the discharge of the bankrupt.).

In *International Harvester Co. v. Carlson* (8 C. C. A.) 217 Fed. 739, it was said:

"We do not think that general equity rules can be applied as rules of court in the performance of the administrative work of courts of bankruptcy. They may be looked to for analogies, but not as rules. The Supreme Court, itself, has fixed the rules to govern courts of bankruptcy."

In *re Hughes* (2 C. C. A.) 262 Fed. 501, it is said:

"We approve of the decision in *International Harvester Co. v. Carlson*, 217 Fed. 736, 133 C. C. A. 430, and hold that the equity rules of the Supreme Court are not rules of court, affecting the administrative work of bankruptcy."

In *No-Leak-O Piston Ring Co. v. Norris*, (2. C. C. A.) 277 Fed. 951, it is said:

"The equity rules are of limited application in bankruptcy (*In re Hughes*, C. C. A. 262 Fed. 500), yet they

furnish a guide to procedure, and this was just as true before the promulgation of the present equity rules as it is now."

In view of some of the holdings of the inferior federal courts, Mr. Remington in his work on Bankruptcy states:

"This general order (No. XXXVII) has been construed to refer only to suits and proceedings other than the proceedings in bankruptcy themselves, in other words, to suits and proceedings brought in the federal courts in aid of bankruptcy proceedings." (1 Remington Bankruptcy, 3rd Ed. §31.)

Petitioner maintains that general order XXXVII does not admit of such an interpretation. To hold that this order applies only to plenary suits in equity brought in district courts, as distinguished from bankruptcy proceedings, would render the order itself wholly inoperative; because the equity rules by their own inherent force govern the practice in all such plenary suits. The order adopting the equity rules would be purposeless, if so construed, since the existing equity rules apply to all equity proceedings that invoke the general equity powers of the District Courts.

The general and comprehensive terms of the order in question leave no room for the process of interpretation. The order contains no words of limitation that restrict its operation to plenary or ancillary suits invoking the general equity powers of the District Courts. The terms employed may imply a limitation of the order to proceedings *in courts of bankruptcy*. It was only in such proceedings that there was any occasion for the order. It was only "for carrying this act into force and effect" that §30 of the bankruptcy act placed upon this court the

duty of prescribing "all necessary rules, forms and orders as to procedure."

There is no departure from this object upon the face of the order requiring conformity to the equity rules. To the contrary, the order employs apt terms to cover the object expressed in §30 of the bankruptcy act. It makes the equity rules of practice apply to proceedings "instituted for the purpose of carrying into effect the *provisions of this act, or for enforcing the rights and remedies given by it.*" Action upon petitions in bankruptcy, voluntary and involuntary, and the various proceedings incident thereto, must be had in the courts of bankruptcy; and when of an equitable nature, as are most of such proceedings, the General Order XXXVII prescribes the equity rules of practice.

It is submitted that in this case the referee and the district judge properly applied equity rule 30 by refusing to strike and by determining the cross-demand presented by the answer of the trustee; and that this court cannot, with due regard to its high power and dignity, sanction the misreading or false interpretation of General Order XXXVII indulged by the Circuit Court of Appeals in this case.

It is further submitted that even if the petitioner has misconceived the purpose and effect of the said general order, and the general equity rules in the case at bar are only to "be looked to for analogies," there is still ample reason for approving the procedure followed by the referee and District Court and rejected by the Circuit Court of Appeals. The reasons for applying this simplified form of procedure in bankruptcy cases are developed in other sections of this brief.

IV.

The decision in the instant case is in conflict with the decisions of Court of Appeals for the Seventh Circuit in Operators Piano Co. v. First Wisconsin Trust Co., 283 Fed. 904, and In re Barnett, 12 Fed. 2d. 73.

The conflict is sufficiently shown by the citations and the portions of the opinion copied in the petition for the writ, under the second reason assigned for its allowance.

The Court of Appeals for the Seventh Circuit has, however, reaffirmed its holding in *Operator's Piano Company v. First Wisconsin Trust Co.* in the later case of *In re Barnett*, 12 Fed. 2d. 73, as follows:

"We have consistently upheld the jurisdiction of the bankruptcy court to determine controveries either in summary or in plenary proceedings, where the adverse party either invokes the jurisdiction or consents to a trial of the disputed issues in such proceedings. *Operator's Piano Co. v. First Wisconsin Trust Co.*, C. C. A. 283, Fed. 904. And we might add that we think greater business efficiency and a more speedy administration of estates, together with greater uniformity in rulings, would be attained if all such controversies could, regardless of the objection of the adverse party, be determined in the bankruptcy court, the court having jurisdiction to administer bankrupt estates."

Thus in the Seventh Circuit the Court of Appeals has decided that courts of bankruptcy may determine controverted issues of fact on cross-demands of a trustee pleaded by answer, against a party who is himself a petitioner for relief, either in summary or plenary proceedings. In the situation exhibited by the present record, the courts of bankruptcy in the Seventh Circuit obtain jurisdiction of the person of petitioners for relief, for the purpose of determining cross-demands of the

trustee pleaded by answer; while by the decision of Court of Appeals of the Eighth Circuit, here complained of, such jurisdiction is denied to the courts of bankruptcy of the Eighth Circuit.

The operation of the bankruptcy act should, as a matter of course, be uniform in all of the federal courts; and such uniformity can only be attained by the settlement of the question by this court. That situation, it is submitted, makes the allowance of the writ a matter of urgency.

V.

Courts of bankruptcy in exercise of their equity powers act in personam and have summary jurisdiction where a party voluntarily appears or can be served with process, regardless of the location of the res or domicile of the party.

Respondents' withdrawal did not deprive the court of jurisdiction to determine the cross-claim of the trustee.

The bankruptcy court has power to make an order concerning the disposition of property of the bankrupt against a party actually before it, either by voluntary appearance or by service of process. To this effect is the decision of this court in *Robertson v. Howard*, 229 U. S. 254, 264, cited in the accompanying petition under the fourth reason assigned for allowance of the writ. The power of the bankruptcy court of primary jurisdiction to order the conveyance of real estate situate in another state was maintained by that decision. The case was cited and its doctrine reaffirmed in the opinion by Mr. Justice Roberts in *Isaacs v. Hobbs Tire & Timber Co.*, 282 U. S. 734. Other cases holding that orders for delivery or other disposition of the property of bankrupts are essentially equitable in their nature and act in personam and are

therefore valid, although the situs of the res is without the district, are: *Alco Film Corp v. Alco Film Service* (2 C. C. A.), 234 Fed. 55, 57; *Orinoco Iron Co. v. Metzel* (6 C. C. A.), 230 Fed. 40; *In re Britannia Mining Co.* (D. C. Wis.), 197 Fed. 459.

Staunton v. Wooden (9 C. C. A.) 179 Fed. 61, cited in the opinion of the lower court herein, is not in conflict with the doctrine here maintained, nor with the cases last above cited. There was no voluntary appearance by Staunton. He resided without the district in which the bankruptcy proceeding was pending, and an order to show cause was served without the district. Staunton's only appearance was special for objecting to the jurisdiction. It was ruled that the court could not send its process without the District. That holding is not a precedent for the instant case, where respondent voluntarily appeared by a petition for relief in his own behalf. Here respondent was already before the court in an equitable proceeding, and under the reformed practice in equity had submitted its person to the jurisdiction of the court to determine the cross-claim presented in the trustee's answer to its own petition.

Respondent stayed tenaciously before the court in the prosecution of its petition for reclamation up to the time of the court's taking up the hearing. The trustee and claimants to certain of the securities in question had appeared by counsel and filed pleadings. At the hearing respondent's counsel dismissed its petition and announced that it was not interested. The withdrawal at that stage did not oust the court of jurisdiction of its person that had previously attached, for the purpose of determining the issue raised by the trustee's cross-claim.

Respondent could not defeat the jurisdiction over this incident of a proceeding that it had initiated. *Operator's Piano Co. v. First Wisconsin Trust Co.* (7 C. C. A.), 283 Fed. 904, 906; *Triangle Electric Co. v. Foutch*, (8 C. C. A.) 40 Fed. (2d), 353, 356; *In re Dernburg & Son, Inc.* (2 C. C. A.), 5 Fed. (2d) 37; *In re Pennsylvania Coffee Co.* (D. C. Pa.), 8 Fed. (2d) 98; *In re Bennett* (7 C. C. A.), 285 Fed. 351.

It is submitted, therefore, that the bankruptcy court had jurisdiction to make the order in question. The order acted on the person of the respondent and was valid without reference to the situs of the res, or to the possible necessity of subsequent ancillary proceedings in the Southern District of New York for its enforcement.

VI.

Equitable terms may be imposed by a court as a condition of granting an order of reclamation.

In *Re Hooven-Owens-Rentschler Co.* (6 C. C. A.) 195 Fed. 424, a petitioner for a rescission of a sale and for the reclamation of personal property was under obligation to account for money received in part payment. In approving a referee's order conditioning reclamation on the delivery to the trustee of the money for which petitioner was accountable, the Court said, p. 426:

"We find then, that petitioner, a resident of Ohio (the bankruptcy administration being in Michigan), was, if it rescinded the sale, liable to account to the bankruptcy trustee for the $560.00 received, and was subject to be sued at law *or in equity* in any court having personal jurisdiction over the petitioner. Under these circumstances petitioner invoked the action of the bankruptcy court in the general subject matter. Full personal jurisdiction over it was thereby acquired, and there was nei-

ther lack of jurisdiction nor abuse of discretion in directing, in that very proceeding, that petitioner should respond to the trustee for any such liability which in fact subsisted."

VII.

The final decision of the Court is not a test of jurisdiction.

The jurisdiction of the bankruptcy court to decide the issues was not dependent upon the nature of its decision for or against the claimed right of reclamation, nor upon whether its order acting in personam could be enforced within the district where the court sat. It may be conceded that such an order could not be enforced by direct process if the party against whom it ran departed from and kept without the district. That would be true whether he was domiciled within or without the district. A contingency might arise in either case making resort to ancillary proceedings in another district necessary, as was done in *In re Small Shoe Co.* (2 C. C. A.), 5 Fed (2d) 956. An order acting in personam against a party who is actually before the court, by appearance or process, is nevertheless valid.

VIII.

CONCLUSION.

The questions involved should be settled by this court.

Prompt administration is required by the bankruptcy act. The act makes ample provisions to facilitate the administration and distribution of bankrupt estates. That purpose has been frequently emphasized by this court in its decisions under the Act of 1898, and also under the Act of 1867. The arm of the bankruptcy court should be the last, of all courts exercising equity powers, to be fettered by unnecessary restrictions in matters of form

and procedure. As far as possible the bankruptcy court of primary jurisdiction should be left free to promptly exercise its statutory authority to determine all questions concerning the collection and distribution of bankrupt estates.

The repeated holdings of this court are to the effect that referees in bankruptcy have summary jurisdiction to require the delivery to the trustee of the bankrupt's property in the hands of any person not having an adverse claim thereto; and also to determine adverse claims where the property is actually or constructively in the trustee's possession. (*Mueller v. Nugent,* 184 U. S. 1; *May v. Henderson,* 268 U. S. 111; *Harrison v. Chamberlain,* 271 U. S. 191.

Uniformity of operation of the bankruptcy act in all the federal courts is an imperious necessity, if the cardinal objects of the act are to be realized. Obvious conflicts in the decisions of the inferior federal courts have confused and hampered and prolonged the administration of bankruptcy estates and have promoted extended litigation, that could be and should be avoided.

Shall General Order XXXVII be applied in courts of bankruptcy and in bankruptcy proceedings, as distinguished from plenary suits invoking the general equity powers of District Courts? Section 30 of the bankruptcy act assigns to the Supreme Court of the United States the function of making orders to govern the practice in courts of bankruptcy; and the general order in question appears, in terms, to adhere to the statute.

If the equity rules of procedure are to be followed as near as may be in equitable proceedings in courts of bankruptcy, it is apparent that the discarded require-

ment that cross-demands must be germane to the subject matter of the original petitioner's cause of action, is not a rule of practice in such courts.

There is certainly as much need to simplify the practice in bankruptcy and to facilitate the settlement of cross-demands in one proceeding, as there is in proceedings under the general equity powers of the District Courts.

The new equity rules effected a great and needed reform in the general practice of equity. This court has apparently, by General Order XXXVII, extended the reformation to courts of bankruptcy for the purpose of simplifying and expediting their proceedings. Will this court suffer the nullification of its progressive rules and orders?

This court is the sole repository of power to enforce uniformity of operation of the bankruptcy act in all of the Federal Courts. It has not decided the question on which the inferior federal courts have divided. It is, therefore, submitted that the writ of certiorari should be granted, and that this court should exercise its supervisory powers by a review of the proceedings, for the purpose of settling the important questions of federal law involved, that have not been, but should be, settled by it.

Respectfully submitted,

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